

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.94/1999

Decided on.11.7.2007

M/s Punjab Laminates Pvt. Ltd.

...Petitioner.

Versus

The Presiding Officer, Labour Court and another.

...Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?¹. yes.

For the petitioner : Mr. Anup Rattan, Advocate.

For the respondents Mr. Rajnish Maniktala, Advocate for respondent No.2.

Rajiv Sharma, J.

A challenge has been laid by the petitioner management to award dated 4.8.1998 passed by the H.P. Industrial Tribunal-cum-Labour Court, Shimla in reference No. 18/1995. The State Government had made the following reference to the H.P. Industrial Tribunal-cum-Labour Court, Shimla:

“Whether the termination of Shri Raghubir Chand Operator-cum-Supervisor S/O Shri Bagu Ram by the Management of Punjab Laminates Pvt. Ltd., 9-10, Industrial Area, Mehatpur (Una) H.P. w.e.f. 28.12.1994, without any notice, enquiry, charge-sheet, payment of legal dues and further on account of his alleged trade union activities is legal and justified? If not, to what relief and service benefits, Shri Raghubir Chand is entitled to?

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

The workman in sequel to the reference had filed the statement of claim. It is averred in the statement of claim that he had discharged his duties continuously with effect from 7th July, 1986 to 26th December, 1994 and the retrenchment effected was in violation of mandatory provisions of the Industrial Disputes Act, 1947. The management had filed the reply to the statement of claim and had categorically denied that there was violation of any of the provisions of the Industrial Disputes Act, 1947 at the time of the retrenchment of the workman. The Labour Court had answered the reference in affirmative and had directed the re-instatement of the workman with full back wages.

Mr. Anup Rattan, Advocate appearing on behalf of the petitioner-management had strenuously argued that the Labour Court had decided the entire issue beyond the scope of reference made by the State Government on 20.5.1995. He had also submitted that the Labour Court had come to a wrong conclusion that there was violation of section 9-A of the Industrial Disputes Act, 1947 and on that basis the retrenchment of the workman was bad in law.

Mr. Rajnish Maniktala, Advocate appearing on behalf of the workman had supported the award dated 4.8.1998.

I have heard the parties and perused the record.

The reference was made by the State Government to the effect whether the termination of the workman with effect from 28.12.1994 was without any notice, inquiry, charge-sheet, payment of legal dues etc. Chapter V-A of the Industrial Disputes Act, 1947 deals with the lay off and retrenchment. Section 25-F of the Industrial Disputes Act, 1947 lays down the condition precedent to retrenchment of workman. Similarly Chapter V-B of the Industrial Disputes Act, 1947 provides for special provision relating to lay off/ retrenchment and closure in certain establishments.

Section 25-N of the Industrial Disputes Act, 1947 provides for conditions precedent to retrenchment of workman under Chapter V-B. Chapter II-A of the Industrial Disputes Act, 1947 provides for notice of change. The relevant portion of section 9-A of the Industrial Disputes Act, 1947 is reproduced.

“9A. Notice of change.- No, employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change-

- (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or**
- (b) within twenty-one days of giving such notice: provided that no notice shall be required for effecting any such change-**
 - a. where the change is effected in pursuance of any [settlement or award]; or**
 - b. where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the official Gazette, apply.”**

The Labour Court while answering the reference had come to a wrong conclusion that since the workman had not been issued any show cause notice under section 9-A of the Industrial Disputes Act, 1947, the retrenchment of the workman was bad in law. Section 9-A of the Industrial Disputes Act, 1947 only provides that if any employer proposes to effect

any change in the conditions of service applicable to any workman shall effect such change by effecting a notice and the change proposes to be effected. The detailed procedure for lay off or retrenchment is only provided under Chapter V-A and V-B of the Industrial Disputes Act, 1947. The Labour Court was required to see whether there was violation of any of the provisions of the Chapter V-A and V-B of the Industrial Disputes Act, 1947 to enable it to come to any conclusion whether the retrenchment of the workman effected on 28.12.1994 was well within the parameters laid down therein or not. The Labour Court had not at all dealt with any of the provisions of Chapter V-A and V-B of the Industrial Disputes Act, 1947 while answering the reference in affirmative. The Labour Court had definitely gone beyond the scope of the reference made and had recorded wrong findings that the workman's retrenchment was bad in law for non-compliance of section 9-A of the Industrial Disputes Act, 1947. The consequences of non-issuance of any notice under section 9-A of the Industrial Disputes Act, 1947 are that the employer will be liable to be proceeded against under the law. The Labour Court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the four corners of the same.

It is settled law by now that a change which is not resulted into change of any of the conditions enumerated in the 4th Schedule will not attract section 9-A. The retrenchment/ lay off is not mentioned as any change of the conditions of service in 4th Schedule.

The Apex Court has held in ***L. Robert D'Sopuza Versus Executive Engineer, Southern Rly***, AIR 1982 SC 854 that when a workman is retrenched it cannot be said that change in his conditions of service is effected. Their Lordships have opined as under:

“It was obligatory upon the employer, who wants to retrench the workmen to give notice as contemplated by clause (3) of Section 25. When a workman is retrenched it cannot be said that change in his conditions of service is effected. The conditions of service are set out in Fourth Schedule. No item in Fourth Schedule covers the case of retrenchment. In fact, retrenchment is specifically covered by Item 10 of the Third Schedule. Now, if retrenchment which connotes termination of service, cannot constitute change in conditions of service in respect of any item mentioned in Fourth Schedule, S. 9-A would not be attracted. In order to attract S. 9-A, the employer must be desirous of effecting a change in conditions of service in respect of any matter specified in Fourth Schedule. If the change proposed does not cover any matter in Fourth Schedule S. 9-A is not attracted and no notice is necessary.”

A Division Bench of Allahabad High Court in ***G.P. Wahal Versus Manager, Reserve Bank of India, Kanpur***, 1983 Labour Industrial Cases 738 has held that under section 9-A of the Industrial Disputes Act, 1947, notice to the workman is required to be given only if there is change in condition of service in respect of matters enumerated in Schedule 4. Their Lordships have held as under:

“S.9-A of the Industrial Disputes Act 1947 lays down that no employer shall change the conditions of service of any workman in respect of any matters specified in the IV Schedule without giving notice to the workman. It was urged that the modified scheme of promotion made changes in the conditions of service applicable to the petitioners and as no notice was given to the employees before making the change,

the modified scheme contravened S. 9-A of the I.D. Act. The notice to the workman is required to be given only if there is change in the conditions of service in respect of matters enumerated in the IV Schedule. Promotion to higher post does not fall in any of the entries contained in the IV Schedule to the I.D. Act, 1947, consequently no notice as contemplated by S. 9-A of the Act was necessary to be given to the employees. Moreover, the modified scheme of promotion did not make any change in the conditions of service, the Reserve Bank, was, therefore, not under any legal obligation to comply with the provisions of S.9-A of I.D. Act, 1947.”

Consequently the award dated 4.8.1998 is liable to be interfered by this Court being without jurisdiction.

Accordingly the writ petition is allowed. The award dated 4.8.1998 passed by the Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Shimla is quashed and set aside. The Labour Court is directed to answer the reference made by the State Government on 20.5.1995 within a period of 3 months from today. Parties are directed to make themselves available before the Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Shimla 13.8.2007. There shall be no order as to costs.

(Rajiv Sharma), Judge

July 11, 2007

Awasthi